

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Voluntary Assignment of Licenses)	File Nos: BALCDT-20100428ADR,
)	BALCDT-20100428ADX
From: TRIBUNE TELEVISION COMPANY,)	
DEBTOR-IN-POSSESSION (WTIC-TV))	MB Docket No. 10-104
)	
To: TRIBUNE TELEVISION COMPANY)	
)	
AND)	
)	FILED/ACCEPTED
From: WTXS, INC., DEBTOR-IN-)	
POSSESSION)	JUN 14 2010
)	
To: WTXS, INC.)	Federal Communications Commission
)	Office of the Secretary
)	

PETITION TO DENY

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June 14, 2010

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SUMMARY

Petitioner Neil Ellis, by his attorneys, and pursuant to Section 309(d) of the Communications Act, 47 U.S.C. § 309(d) and 47 C.F.R. § 73.3555, hereby petitions the Federal Communications Commission (“FCC” or “Commission”) to deny Tribune Company’s (“Tribune”) request for a waiver of the newspaper-broadcast cross-ownership rule. Tribune’s application seeks consent to the assignment of the license of WTIC-TV, Hartford, Connecticut from Tribune Television Company, Debtor-in-Possession (“TTC-DIP”) to Tribune Television Company (“Reorganized TTC”), and the assignment of the license of WTXS(TV), Waterbury, Connecticut (Hartford & New Haven, Connecticut Designated Market Area (“DMA”)) from WTXS, Inc., Debtor-in-Possession (“WI-DIP”) to WTXS, Inc. (“Reorganized WI”). This proposed assignment is part of the reorganization of Tribune Company, Debtor-in-Possession (“Tribune”), the ultimate parent company of TTC-DIP and WI-DIP, and most of Tribune’s subsidiaries, in which, subject to the approval of the Bankruptcy Court, certain of Tribune’s current lenders will acquire equity interests and Reorganized Tribune will emerge from bankruptcy and thereafter become a publicly traded company.

In connection with this application, Reorganized TTC and Reorganized WI (together, the “Reorganized Licensees”) requested a permanent waiver of Section 73.3555(d), the newspaper broadcast cross-ownership rule (the “NBCO Rule”), to permit the continued ownership of WTIC-TV and WTXS(TV) (together, the “Stations”), along with the *Hartford Courant* (the “*Courant*”), a daily newspaper published in Hartford, Connecticut by a Tribune subsidiary. In the alternative, Tribune seeks a temporary waiver of the NBCO Rule until 18 months after pending proceedings to revise the rule become final.

The Commission should deny Tribune’s application for either a permanent or temporary waiver as not being in the public interest because it violates the FCC’s NBCO rule and because

Tribune has failed to demonstrate that waiving the rule here would serve the public interest. Moreover, Tribune's contention that it is a "failed station" is not supported by its application.

I. THE PETITIONERS

Petitioner, Neil Ellis is a resident of the Hartford, Connecticut DMA which is the community affected by this matter and also co-owner, with his wife Elizabeth, of the *Manchester Journal Inquirer* newspaper. See Ellis Declaration. Mr. Ellis is harmed both as a journalist and as a consumer of news. As the owner of a competitor newspaper, Mr. Ellis suffers from the Tribune's use of the benefits it receives as a result of the cross-ownership to prop up the bankrupt *Hartford Courant*. As a consumer of news, Mr. Ellis is harmed by the loss of diversity and viewpoints, especially in coverage of local news. See *id.*

II. THE COMMISSION SHOULD DENY TRIBUNE'S REQUEST FOR WAIVER OF THE NBCO RULE

A. Assignment of the licenses of the two Connecticut broadcast stations to an entity that would also control the *Hartford Courant* is Contrary to the Public interest under the current rules.

In February 2008, the Commission relaxed the NBCO rule by adopting a rebuttable presumption that

a waiver of the cross-ownership ban is in the public interest in the following circumstances: when a daily newspaper seeks to combine with a radio station in a top 20 DMA, or when a daily newspaper seeks to combine with a television station in a top 20 DMA and (1) the television station is not among the top four ranked stations in the market and (2) at least eight "major media voices" would remain in the DMA. We will continue to presume that all other proposed newspaper/broadcast station combinations are not in the public interest, subject only to two limited exceptions.¹

This revised NBCO rule took effect on March 23, 2010.

¹ 2008 Order, 23 FCC Rcd at 2022-23. The rule has been codified at 47 CFR §73.3555(d).

Tribune's application to assign the licensees of WTIC-TV and WTX(AM) does not qualify for this presumption because it seeks to combine a daily newspaper with two television stations. Thus, the FCC may not approve the assignment unless Tribune can reverse or rebut this presumption.

B. Tribune Has Failed to Meet Either Test that Might Justify Reversal of the Presumption that the Assignment is Not in the Public Interest

The presumption that combination is not in the public interest may be reversed in "two special circumstances." 2008 Order, 23 FCC Rcd at 2047-49 ¶65. Tribune, however, is unable to show that it fits within either special circumstance.

1. Tribune Does Not Meet the Failed or Failing Station Test

To reverse the presumption under the failed station test, the applicant must show that "the newspaper or broadcast outlet has to have stopped circulating or have been dark for at least four months immediately prior to the filing of the assignment or transfer of control application, or must be involved in court-supervised *involuntary* bankruptcy or involuntary insolvency proceedings." 2008 Order, 23 FCC Rcd at ¶65 (emphasis added). Tribune cannot qualify under this test since both stations remain on the air and the *Hartford Courant* remains in circulation. Moreover, Tribune's bankruptcy was not involuntary.

Nor can Tribune meet the failing station test:

To qualify as failing, the applicant must show that (1) the broadcast station has had a low all-day audience share (*i.e.*, 4 percent or lower), (2) the financial condition of the newspaper or broadcast station is poor (*i.e.*, a negative cash flow for the previous three years), and (3) the combination will produce public interest benefits. In addition, as with requests for failed station waivers of the local television ownership rule, the applicant must show that the in-market buyer is the only reasonably available candidate willing and able to acquire and operate the failed or failing newspaper or station and that selling the newspaper or station to any out-of-market buyer would result in an artificially depressed price.

2008 Order at ¶ 65 (footnotes omitted).

Tribune does not meet this test because it has not shown that it was unable to find buyer for either of the stations or the newspaper. The Commission requires:

applicants to make a serious attempt to sell the troubled station to an entity that would not require a waiver of our revised duopoly rule. Waiver applicants must demonstrate that the “in-market” buyer is the only reasonably available entity willing and able to operate the station, and that selling to another buyer would lead to an artificially depressed price for the station. One way to make this showing will be to provide an affidavit from an independent broker affirming that active and serious efforts have been made to sell the station, and that no reasonable offer from an entity outside the market has been received.²

Tribune has not provided an affidavit from an independent broker nor made any serious efforts to find a buyer. Indeed, it appears not to have made any efforts to find a buyer for either of the stations or the newspaper. Its only claims that “due to the economic conditions of the newspaper and broadcast industries, it is . . . unreasonable to assume that Tribune could locate a buyer for any of the properties involved at other than at an artificially depressed price.” Tribune Waiver Request at 102.

The Commission simply cannot assume that that Tribune could not sell the television stations or newspaper without evidence that Tribune has tried to sell them. If these unspecified claims of financial distress in the media were sufficient to meet the failing station test, then every broadcaster and/or newspaper owner could arguably qualify.

C. Tribune Does Not Meet Its Heavy Burden to Rebut the Presumption that the Assignment is Not in the Public Interest Under the Four Factor Test

In the 2008 Order, the Commission notes that “[t]o the extent that the proposed combination does not qualify for a positive presumption, it will have a high hurdle to cross to win Commission approval.” ¶68. To overcome the negative presumption, Tribune would have

² 1999 Duopoly Order, 14 FCC Rcd at 12937-38.

to “show by *clear and convincing evidence* that the co-owned major newspaper and station will increase competition among independent news sources in the market.” 47 CFR § 73.3555(d)(6) (emphasis added).

In considering whether an applicant has overcome the presumption that the combination is not in the public interest, the Commission considers the four factors set forth in 47 CFR § 73.3555(d)(5). Tribune’s showing regarding the four factors falls far short of what is needed to rebut the presumption.

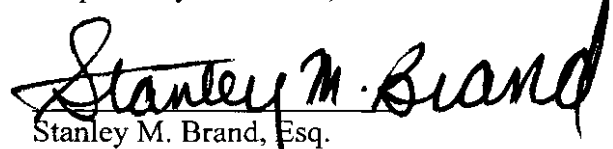
Of these factors, Petitioner urges the Commission to take special note of the second: whether the newspaper and the broadcast outlets each will continue to employ its own staff and each will exercise its own independent news judgment. Tribune acknowledges that the entities share a chief financial officer and coordinate news coverage among the respective news staffs. Waiver App. at 35-37.

Indeed, Petitioner avers that rather than using its ownership of multiple media outlets to improve local coverage, Tribune instead utilizes the Television stations to bolster advertising revenues by offering advertisers discounted rates for purchasing ads with both the television stations and the newspaper. *See Ellis Declaration*. This behavior not only improperly takes advantage of Tribune’s cross-ownership, but it severely harms the ability of other media entities, like the *Manchester Journal Inquirer* from competing for those advertisers as a stand-alone entity. *Id.* Surely such behavior by Tribune is not in the public interest

CONCLUSION

For the foregoing reasons, Petitioner requests that the Commission deny Tribune’s request for waiver and the assignment of the licenses for WTXN and WTIC-TV.

Respectfully Submitted,

A handwritten signature in black ink that reads "Stanley M. Brand". The signature is written in a cursive style with a large, stylized "S" and "B".

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June 14, 2010

Counsel for Neil Ellis

Certificate of Service

I, Lance L. Sims, hereby certify that on this 14th day of May 2010, a copy of the foregoing Reply to Tribune's Opposition to Petition to Deny Applications for Renewal of Broadcast Stations Licenses for WTXX and WTIC-TV, was served by first-class mail, postage prepaid, upon the following:

John F. Feore, Jr.
Dow Lohnes PLLC
1200 New Hampshire Avenue, NW
Washington DC
jfeore@dowlohnesh.com
Counsel for WTXX Inc., WTIC and Tribune Television Company

In addition, I have provided a courtesy copy via email to John F. Feore, Jr.



Lance L. Sims


Attachment A

DECLARATION OF NEIL ELLIS

I, Neil Ellis, base this declaration on my personal knowledge and experience.

1. I am a resident of the Hartford, Connecticut area which is the community affected by Tribune's request for a newspaper-broadcast cross-ownership ("NCBO") waiver.
2. From time-to-time I view WTIC-TV, WTXX and read *The Hartford Courant*.
3. I, believe that I, as well as the public at large, have been injured by the lack of diversity and competition within the media market for the Hartford area and will continue to be injured if the FCC grants Tribune's requested NCBO waiver.
4. As the owner the *Manchester Journal Inquirer*, I am also a journalist and a direct competitor with the *Hartford Courant*, and must compete for advertisers with all of the media entities in the DMA.
5. I have reviewed the Petition to Deny Tribunes Application for a NBCO Waiver. As described in the foregoing Petition to Deny, I would be harmed by Tribune's ownership of the two television stations and the newspaper in the following ways:
 - a. I, like my community as a whole, will be harmed by a loss of diversity in viewpoints and competition, especially in coverage of local news.
 - b. As a journalist, I, and other owners of stand-alone media entities, will continue to be harmed by Tribune's improper use of cross-advertising and other benefits of cross-ownership to assist the revenues of the *Hartford Courant* and the television stations.
6. This Declaration has been prepared in support of the foregoing Petition to Deny.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 11th DAY OF JUNE 2010.



Neil Ellis